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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (PSG)

**DECLARATION OF SARA E. JENKINS
IN SUPPORT OF CISCO SYSTEMS,
INC.'S ADMINISTRATIVE MOTION TO
FILE UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO SYSTEMS,
INC.'S OPPOSITION TO MOTION TO
STRIKE**

DEMAND FOR JURY TRIAL

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Cisco’s Administrative Motion to File Under Seal Confidential Information in connection with Cisco’s Opposition to Arista’s Motion to Strike (“Cisco’s Opposition”). I make this declaration in accordance with Civil Local Rule 79-5(e) on behalf of Cisco to confirm that the information contained in the documents referenced in the Sealing Motion should be sealed.

3. Cisco’s Opposition is non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, that the document is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), good cause exists to seal the documents identified in the Sealing Motion, also set forth below, because the information sought to be sealed reflects confidential information that “give[s] [Cisco] an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt b).:

Document	Portions to Be Filed Under Seal
Cisco's Opposition to Motion to Strike ("Brief")	Highlighted Portions
Exhibit K to the Declaration of Andrew M. Holmes in Support of Cisco's Motion for Protective Order ("Exhibit K")	Entire
Exhibit L to the Declaration of Andrew M. Holmes in Support of Cisco's Motion for Protective Order ("Exhibit L")	Entire
Exhibit M to the Declaration of Andrew M. Holmes in Support of Cisco's Motion for Protective Order ("Exhibit M")	Entire
Exhibit N to the Declaration of Andrew M. Holmes in Support of Cisco's Motion for Protective Order ("Exhibit N")	Entire
Exhibit O to the Declaration of Andrew M. Holmes in Support of Cisco's Motion for Protective Order ("Exhibit O")	Entire

Document	Portions to Be Filed Under Seal
Exhibit P to the Declaration of Andrew M. Holmes in Support of Cisco's Motion for Protective Order ("Exhibit P")	Entire

5. Exhibit K is a copy of Exhibit A to Plaintiff Cisco's Second Supplemental Responses and Objections to Defendant Arista Networks, Inc.'s Interrogatory No. 15. This document is designated as "Highly Confidential – Attorneys' Eyes Only Information." This document comprises Cisco's confidential business information regarding sales, customers, and accounts. Specifically, Exhibit A identifies customers that are specific sales lost to Arista that would have been sales made by Cisco but for Arista's infringement. Maintaining this information as confidential provides Cisco with an "opportunity to obtain an advantage over competitors" who may compete with Cisco and engage in marketing and sales less optimally than Cisco. *Elec. Arts*, 298 F. App'x at 569. Moreover, disclosing this information to Cisco's competitors would harm Cisco's business by, *inter alia*, allowing Cisco's competitors to learn the identify of Cisco's customers and allowing competitors in turn to target Cisco's customers. This would "harm [Cisco's] competitive standing." *Nixon*, 435 U.S. at 598. Cisco also expects that Arista will file a supporting declaration for the sealing of this document.

6. Exhibit L is a copy of excerpts of Defendant Arista Networks, Inc.'s Further Supplemental Responses to Plaintiff Cisco System Inc.'s First, Third, and Fourth Set of Interrogatories (Nos. 10-12, 13, 15-18, and 21), that has been designated by Arista as "Contains Confidential Information Subject to Protective Order." Portions of Exhibit L also contain information that Cisco has designated as "Highly Confidential – Attorneys' Eyes Only Information." This document comprises Cisco's confidential business information regarding Cisco's source code, competitive strategies and accounts. Maintaining this information as confidential provides Cisco with an "opportunity to obtain an advantage over competitors" who

1 may compete with Cisco in the technical field and engage in marketing and sales less optimally
2 than Cisco. *Elec. Arts*, 298 F. App'x at 569. Moreover, disclosing this information to Cisco's
3 competitors would harm Cisco's business by, *inter alia*, allowing Cisco's competitors to learn
4 confidential information about Cisco's technology as well as learn Cisco's competitive strategies.
5 This would "harm [Cisco's] competitive standing." *Nixon*, 435 U.S. at 598. Cisco also expects
6 that Arista will file a supporting declaration for the sealing of this document.

7 7. Exhibit M is a copy of excerpts of the deposition of Soni Jiandani. This deposition
8 transcript has been designated as "Highly Confidential – Outside Counsel Only." This document
9 comprises Cisco's confidential business information regarding Cisco's customers, competitive
10 strategies and accounts. Maintaining this information as confidential provides Cisco with an
11 "opportunity to obtain an advantage over competitors" who may compete with Cisco in the
12 technical field and engage in marketing and sales less optimally than Cisco. *Elec. Arts*, 298 F.
13 App'x at 569. Moreover, disclosing this information to Cisco's competitors would harm Cisco's
14 business by, *inter alia*, allowing Cisco's competitors to learn the identify of Cisco's customers and
15 allowing competitors in turn to target Cisco's customers. This would "harm [Cisco's] competitive
16 standing." *Nixon*, 435 U.S. at 598.

17 8. Exhibit N is a copy of excerpts from the deposition of John T. Chambers. This
18 deposition transcript has been designated as "Highly Confidential Under Protective Order." This
19 document comprises Cisco's confidential business information regarding Cisco's customers,
20 competitive strategies and accounts. Maintaining this information as confidential provides Cisco
21 with an "opportunity to obtain an advantage over competitors" who may compete with Cisco in
22 the technical field and engage in marketing and sales less optimally than Cisco. *Elec. Arts*, 298 F.
23 App'x at 569. Moreover, disclosing this information to Cisco's competitors would harm Cisco's
24 business by, *inter alia*, allowing Cisco's competitors to learn the identify of Cisco's customers and
25 allowing competitors in turn to target Cisco's customers. This would "harm [Cisco's] competitive
26 standing." *Nixon*, 435 U.S. at 598.

1 9. Exhibit O is a copy of excerpts from the deposition of Jeffrey Birnbaum. This
2 document comprises Cisco's confidential business information regarding Cisco's customers,
3 competitive strategies and accounts. Maintaining this information as confidential provides Cisco
4 with an "opportunity to obtain an advantage over competitors" who may compete with Cisco in
5 the technical field and engage in marketing and sales less optimally than Cisco. *Elec. Arts*, 298 F.
6 App'x at 569. Moreover, disclosing this information to Cisco's competitors would harm Cisco's
7 business by, *inter alia*, allowing Cisco's competitors to learn the identify of Cisco's customers and
8 allowing competitors in turn to target Cisco's customers. This would "harm [Cisco's] competitive
9 standing." *Nixon*, 435 U.S. at 598.

10 10. Exhibit P is a copy of excerpts from the deposition of Deepak Malik. This
11 document comprises Cisco's confidential business information regarding Cisco's customers,
12 competitive strategies and accounts. Maintaining this information as confidential provides Cisco
13 with an "opportunity to obtain an advantage over competitors" who may compete with Cisco in
14 the technical field and engage in marketing and sales less optimally than Cisco. *Elec. Arts*, 298 F.
15 App'x at 569. Moreover, disclosing this information to Cisco's competitors would harm Cisco's
16 business by, *inter alia*, allowing Cisco's competitors to learn the identify of Cisco's customers and
17 allowing competitors in turn to target Cisco's customers. This would "harm [Cisco's] competitive
18 standing." *Nixon*, 435 U.S. at 598.

19 11. The portions of Cisco's Opposition to be sealed quote and discuss Arista and
20 Cisco's confidential information from Exhibits K through P regarding Cisco's competitors and
21 related competition, and Cisco's strategies regarding the same. Thus, these portions similarly
22 comprise Cisco's confidential business information, the confidentiality of which provides Cisco an
23 "opportunity to obtain an advantage over competitors," and which would harm Cisco's business if
24 disclosed to Cisco's competitors. *Elec. Arts*, 298 F. App'x at 569.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed in San Francisco, California,
3 on June 27, 2016.

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5 /s/ Sara E. Jenkins
6 Sara E. Jenkins
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SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Sara E. Jenkins.

Dated: June 27, 2016

/s/ Amy H. Candido
Amy H. Candido